

AMENDED IN ASSEMBLY MAY 14, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2374

Introduced by Assembly Member Roger Hernández

February 24, 2012

An act to amend Sections 1785.11.2 and 1785.15 of the Civil Code, relating to consumer credit reports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2374, as amended, Roger Hernández. Consumer credit reports: security freezes.

Existing state law defines and regulates consumer credit reports and permits a consumer to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. Existing law requires a consumer credit reporting agency to place the security freeze on the consumer's credit report within 3 business days after receiving the consumer's request. Under existing law, an agency may charge a fee of no more than \$5 to a consumer 65 years of age or older for placing, lifting, or removing a security freeze.

This bill would prohibit a consumer credit reporting agency from charging any fee upon a consumer 65 years of age or older for ~~placing, lifting,~~ *placing a security freeze. Under the bill, a consumer credit reporting agency could continue to charge a consumer 65 years of age or older a fee of no more than \$5 for lifting or removing a security freeze.* The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.11.2 of the Civil Code is amended
2 to read:

3 1785.11.2. (a) A consumer may elect to place a security freeze
4 on his or her credit report by making a request in writing by mail
5 to a consumer credit reporting agency. "Security freeze" means a
6 notice placed in a consumer's credit report, at the request of the
7 consumer, and subject to certain exceptions, that prohibits the
8 consumer credit reporting agency from releasing the consumer's
9 credit report or any information from it without the express
10 authorization of the consumer. If a security freeze is in place,
11 information from a consumer's credit report may not be released
12 to a third party without prior express authorization from the
13 consumer. This subdivision does not prevent a consumer credit
14 reporting agency from advising a third party that a security freeze
15 is in effect with respect to the consumer's credit report.

16 (b) A consumer credit reporting agency shall place a security
17 freeze on a consumer's credit report no later than three business
18 days after receiving a written request from the consumer.

19 (c) The consumer credit reporting agency shall send a written
20 confirmation of the security freeze to the consumer within 10
21 business days and shall provide the consumer with a unique
22 personal identification number or password to be used by the
23 consumer when providing authorization for the release of his or
24 her credit for a specific party or period of time.

25 (d) If the consumer wishes to allow his or her credit report to
26 be accessed for a specific party or period of time while a freeze is
27 in place, he or she shall contact the consumer credit reporting
28 agency, request that the freeze be temporarily lifted, and provide
29 the following:

30 (1) Proper identification, as defined in subdivision (c) of Section
31 1785.15.

32 (2) The unique personal identification number or password
33 provided by the credit reporting agency pursuant to subdivision
34 (c).

1 (3) The proper information regarding the third party who is to
2 receive the credit report or the time period for which the report
3 shall be available to users of the credit report.

4 (e) A consumer credit reporting agency that receives a request
5 from a consumer to temporarily lift a freeze on a credit report
6 pursuant to subdivision (d) shall comply with the request no later
7 than three business days after receiving the request.

8 (f) A consumer credit reporting agency may develop procedures
9 involving the use of telephone, fax, the Internet, or other electronic
10 media to receive and process a request from a consumer to
11 temporarily lift a freeze on a credit report pursuant to subdivision
12 (d) in an expedited manner.

13 (g) A consumer credit reporting agency shall remove or
14 temporarily lift a freeze placed on a consumer's credit report only
15 in the following cases:

16 (1) Upon consumer request, pursuant to subdivision (d) or (j).

17 (2) If the consumer's credit report was frozen due to a material
18 misrepresentation of fact by the consumer. If a consumer credit
19 reporting agency intends to remove a freeze upon a consumer's
20 credit report pursuant to this paragraph, the consumer credit
21 reporting agency shall notify the consumer in writing prior to
22 removing the freeze on the consumer's credit report.

23 (h) A third party who requests access to a consumer credit report
24 in connection with an application for credit or any other use may
25 treat the application as incomplete if a security freeze is in effect
26 and the consumer does not allow his or her credit report to be
27 accessed for that specific party or period of time.

28 (i) If a consumer requests a security freeze, the consumer credit
29 reporting agency shall disclose the process of placing and
30 temporarily lifting a freeze and the process for allowing access to
31 information from the consumer's credit report for a specific party
32 or period of time while the freeze is in place.

33 (j) A security freeze shall remain in place until the consumer
34 requests that the security freeze be removed. A consumer credit
35 reporting agency shall remove a security freeze within three
36 business days of receiving a request for removal from the consumer
37 if the consumer provides both of the following:

38 (1) Proper identification, as defined in subdivision (c) of Section
39 1785.15.

1 (2) The unique personal identification number or password
2 provided by the credit reporting agency pursuant to subdivision
3 (c).

4 (k) A consumer credit reporting agency shall require proper
5 identification, as defined in subdivision (c) of Section 1785.15, of
6 the person making a request to place or remove a security freeze.

7 (l) The provisions of this section do not apply to the use of a
8 consumer credit report by any of the following:

9 (1) (A) (i) A person or entity with which the consumer has or
10 had, prior to any assignment, an account or contract, including a
11 demand deposit account, or to which the consumer issued a
12 negotiable instrument, for the purpose of reviewing the account
13 or collecting the financial obligation owing for the account,
14 contract, or negotiable instrument.

15 (ii) A subsidiary, affiliate, or agent of a person or entity
16 described in clause (i), an assignee of a financial obligation owing
17 by the consumer to such a person or entity, or a prospective
18 assignee of a financial obligation owing by the consumer to such
19 a person or entity in conjunction with the proposed purchase of
20 the financial obligation, for the purpose of reviewing the account
21 or collecting the financial obligation owing for the account,
22 contract, or negotiable instrument.

23 (B) For purposes of this paragraph, “reviewing the account”
24 includes activities related to account maintenance, monitoring,
25 credit line increases, and account upgrades and enhancements.

26 (2) A subsidiary, affiliate, agent, assignee, or prospective
27 assignee of a person to whom access has been granted under
28 subdivision (d) for purposes of facilitating the extension of credit
29 or other permissible use.

30 (3) Any state or local agency, law enforcement agency, trial
31 court, or private collection agency acting pursuant to a court order,
32 warrant, or subpoena.

33 (4) A child support agency acting pursuant to Chapter 2
34 (commencing with Section 17400) of Division 17 of the Family
35 Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

36 (5) The State Department of Health Care Services or its agents
37 or assigns acting to investigate Medi-Cal fraud.

38 (6) The Franchise Tax Board or its agents or assigns acting to
39 investigate or collect delinquent taxes or unpaid court orders or to
40 fulfill any of its other statutory responsibilities.

1 (7) The use of credit information for the purposes of
2 prescreening as provided for by the federal Fair Credit Reporting
3 Act.

4 (8) Any person or entity administering a credit file monitoring
5 subscription service to which the consumer has subscribed.

6 (9) Any person or entity for the purpose of providing a consumer
7 with a copy of his or her credit report upon the consumer's request.

8 (m) (1) Except as provided in paragraph (2), this title does not
9 prevent a consumer credit reporting agency from charging a fee
10 of no more than ten dollars (\$10) to a consumer for the placement
11 of each freeze, the removal of the freeze, the temporary lift of the
12 freeze for a period of time, or the temporary lift of the freeze for
13 a specific party, regarding access to a consumer credit report,
14 except that a consumer credit reporting agency may not charge a
15 fee to a victim of identity theft who has submitted a valid police
16 report or valid Department of Motor Vehicles investigative report
17 that alleges a violation of Section 530.5 of the Penal Code.

18 (2) With respect to a consumer who is 65 years of age or older
19 and who has provided identification confirming his or her age, a
20 consumer credit reporting agency shall not charge a fee for the
21 placement of each freeze, *but may charge a fee not to exceed five*
22 *dollars (\$5) for the removal of the freeze, the temporary lift of the*
23 *freeze for a period of time, or the temporary lift of the freeze for*
24 *a specific party.*

25 (n) Regardless of the existence of a security freeze, a consumer
26 reporting agency may disclose public record information lawfully
27 obtained by, or for, the consumer reporting agency from an open
28 public record to the extent otherwise permitted by law. This
29 subdivision does not prohibit a consumer reporting agency from
30 electing to apply a valid security freeze to the entire contents of a
31 credit report.

32 SEC. 2. Section 1785.15 of the Civil Code is amended to read:

33 1785.15. (a) A consumer credit reporting agency shall supply
34 files and information required under Section 1785.10 during normal
35 business hours and on reasonable notice. In addition to the
36 disclosure provided by this chapter and any disclosures received
37 by the consumer, the consumer has the right to request and receive
38 all of the following:

1 (1) Either a decoded written version of the file or a written copy
2 of the file, including all information in the file at the time of the
3 request, with an explanation of any code used.

4 (2) A credit score for the consumer, the key factors, and the
5 related information, as defined in and required by Section
6 1785.15.1.

7 (3) A record of all inquiries, by recipient, that result in the
8 provision of information concerning the consumer in connection
9 with a credit transaction not initiated by the consumer and that
10 were received by the consumer credit reporting agency in the
11 12-month period immediately preceding the request for disclosure
12 under this section.

13 (4) The recipients, including end users specified in Section
14 1785.22, of any consumer credit report on the consumer which the
15 consumer credit reporting agency has furnished:

16 (A) For employment purposes within the two-year period
17 preceding the request.

18 (B) For any other purpose within the 12-month period preceding
19 the request.

20 Identification for purposes of this paragraph shall include the
21 name of the recipient or, if applicable, the fictitious business name
22 under which the recipient does business disclosed in full. If
23 requested by the consumer, the identification shall also include
24 the address of the recipient.

25 (b) Files maintained on a consumer shall be disclosed promptly
26 as follows:

27 (1) In person, at the location where the consumer credit reporting
28 agency maintains the trained personnel required by subdivision
29 (d), if he or she appears in person and furnishes proper
30 identification.

31 (2) By mail, if the consumer makes a written request with proper
32 identification for a copy of the file or a decoded written version
33 of that file to be sent to the consumer at a specified address. A
34 disclosure pursuant to this paragraph shall be deposited in the
35 United States mail, postage prepaid, within five business days after
36 the consumer's written request for the disclosure is received by
37 the consumer credit reporting agency. Consumer credit reporting
38 agencies complying with requests for mailings under this section
39 shall not be liable for disclosures to third parties caused by

1 mishandling of mail after the mailings leave the consumer credit
2 reporting agencies.

3 (3) A summary of all information contained in files on a
4 consumer and required to be provided by Section 1785.10 shall
5 be provided by telephone, if the consumer has made a written
6 request, with proper identification for telephone disclosure.

7 (4) Information in a consumer's file required to be provided in
8 writing under this section may also be disclosed in another form
9 if authorized by the consumer and if available from the consumer
10 credit reporting agency. For this purpose, a consumer may request
11 disclosure in person pursuant to Section 1785.10, by telephone
12 upon disclosure of proper identification by the consumer, by
13 electronic means if available from the consumer credit reporting
14 agency, or by any other reasonable means that is available from
15 the consumer credit reporting agency.

16 (c) "Proper identification," as used in subdivision (b) means
17 that information generally deemed sufficient to identify a person.
18 Only if the consumer is unable to reasonably identify himself or
19 herself with the information described above may a consumer
20 credit reporting agency require additional information concerning
21 the consumer's employment and personal or family history in order
22 to verify his or her identity.

23 (d) The consumer credit reporting agency shall provide trained
24 personnel to explain to the consumer any information furnished
25 him or her pursuant to Section 1785.10.

26 (e) The consumer shall be permitted to be accompanied by one
27 other person of his or her choosing, who shall furnish reasonable
28 identification. A consumer credit reporting agency may require
29 the consumer to furnish a written statement granting permission
30 to the consumer credit reporting agency to discuss the consumer's
31 file in that person's presence.

32 (f) Any written disclosure by a consumer credit reporting agency
33 to any consumer pursuant to this section shall include a written
34 summary of all rights the consumer has under this title and, in the
35 case of a consumer credit reporting agency that compiles and
36 maintains consumer credit reports on a nationwide basis, a toll-free
37 telephone number that the consumer can use to communicate with
38 the consumer credit reporting agency. The written summary of
39 rights required under this subdivision is sufficient if in substantially
40 the following form:

1 “You have a right to obtain a copy of your credit file from a
2 consumer credit reporting agency. You may be charged a
3 reasonable fee not exceeding eight dollars (\$8). There is no fee,
4 however, if you have been turned down for credit, employment,
5 insurance, or a rental dwelling because of information in your
6 credit report within the preceding 60 days. The consumer credit
7 reporting agency must provide someone to help you interpret the
8 information in your credit file.

9 You have a right to dispute inaccurate information by contacting
10 the consumer credit reporting agency directly. However, neither
11 you nor any credit repair company or credit service organization
12 has the right to have accurate, current, and verifiable information
13 removed from your credit report. Under the Federal Fair Credit
14 Reporting Act, the consumer credit reporting agency must remove
15 accurate, negative information from your report only if it is over
16 seven years old. Bankruptcy information can be reported for 10
17 years.

18 If you have notified a consumer credit reporting agency in
19 writing that you dispute the accuracy of information in your file,
20 the consumer credit reporting agency must then, within 30 business
21 days, reinvestigate and modify or remove inaccurate information.
22 The consumer credit reporting agency may not charge a fee for
23 this service. Any pertinent information and copies of all documents
24 you have concerning an error should be given to the consumer
25 credit reporting agency.

26 If reinvestigation does not resolve the dispute to your satisfaction,
27 you may send a brief statement to the consumer credit reporting
28 agency to keep in your file, explaining why you think the record
29 is inaccurate. The consumer credit reporting agency must include
30 your statement about disputed information in a report it issues
31 about you.

32 You have a right to receive a record of all inquiries relating to
33 a credit transaction initiated in 12 months preceding your request.
34 This record shall include the recipients of any consumer credit
35 report.

36 You may request in writing that the information contained in
37 your file not be provided to a third party for marketing purposes.

38 You have a right to place a “security alert” in your credit report,
39 which will warn anyone who receives information in your credit
40 report that your identity may have been used without your consent.

1 Recipients of your credit report are required to take reasonable
2 steps, including contacting you at the telephone number you may
3 provide with your security alert, to verify your identity prior to
4 lending money, extending credit, or completing the purchase, lease,
5 or rental of goods or services. The security alert may prevent credit,
6 loans, and services from being approved in your name without
7 your consent. However, you should be aware that taking advantage
8 of this right may delay or interfere with the timely approval of any
9 subsequent request or application you make regarding a new loan,
10 credit, mortgage, or cellular phone or other new account, including
11 an extension of credit at point of sale. If you place a security alert
12 on your credit report, you have a right to obtain a free copy of your
13 credit report at the time the 90-day security alert period expires.
14 A security alert may be requested by calling the following toll-free
15 telephone number: (Insert applicable toll-free telephone number).
16 California consumers also have the right to obtain a “security
17 freeze.”

18 You have a right to place a “security freeze” on your credit
19 report, which will prohibit a consumer credit reporting agency
20 from releasing any information in your credit report without your
21 express authorization. A security freeze must be requested in
22 writing by mail. The security freeze is designed to prevent credit,
23 loans, and services from being approved in your name without
24 your consent. However, you should be aware that using a security
25 freeze to take control over who gets access to the personal and
26 financial information in your credit report may delay, interfere
27 with, or prohibit the timely approval of any subsequent request or
28 application you make regarding a new loan, credit, mortgage, or
29 cellular phone or other new account, including an extension of
30 credit at point of sale. When you place a security freeze on your
31 credit report, you will be provided a personal identification number
32 or password to use if you choose to remove the freeze on your
33 credit report or authorize the release of your credit report for a
34 specific party or period of time after the freeze is in place. To
35 provide that authorization you must contact the consumer credit
36 reporting agency and provide all of the following:

- 37 (1) The personal identification number or password.
- 38 (2) Proper identification to verify your identity.

1 (3) The proper information regarding the third party who is to
2 receive the credit report or the period of time for which the report
3 shall be available to users of the credit report.

4 A consumer credit reporting agency must authorize the release
5 of your credit report no later than three business days after
6 receiving the above information.

7 A security freeze does not apply when you have an existing
8 account and a copy of your report is requested by your existing
9 creditor or its agents or affiliates for certain types of account
10 review, collection, fraud control, or similar activities.

11 If you are actively seeking credit, you should understand that
12 the procedures involved in lifting a security freeze may slow your
13 application for credit. You should plan ahead and lift a freeze,
14 either completely if you are shopping around, or specifically for
15 a certain creditor, before applying for new credit.

16 A consumer credit reporting agency may not charge a fee to a
17 consumer for placing or removing a security freeze if the consumer
18 is a victim of identity theft and submits a copy of a valid police
19 report or valid Department of Motor Vehicles investigative report.
20 A person 65 years of age or older with proper identification shall
21 not be charged a fee for ~~placing, lifting,~~ *placing a security freeze,*
22 *but may be charged a fee of no more than five dollars (\$5) for*
23 *lifting* or removing a security freeze. All other consumers may be
24 charged a fee of no more than \$10 for each of these steps.

25 You have a right to bring civil action against anyone, including
26 a consumer credit reporting agency, who improperly obtains access
27 to a file, knowingly or willfully misuses file data, or fails to correct
28 inaccurate file data.

29 If you are a victim of identity theft and provide to a consumer
30 credit reporting agency a copy of a valid police report or a valid
31 investigative report made by a Department of Motor Vehicles
32 investigator with peace officer status describing your
33 circumstances, the following shall apply:

34 (1) You have a right to have any information you list on the
35 report as allegedly fraudulent promptly blocked so that the
36 information cannot be reported. The information will be unblocked
37 only if (A) the information you provide is a material
38 misrepresentation of the facts, (B) you agree that the information
39 is blocked in error, or (C) you knowingly obtained possession of

- 1 goods, services, or moneys as *a* result of the blocked transactions.
- 2 If blocked information is unblocked, you will be promptly notified.
- 3 (2) You have a right to receive, free of charge and upon request,
- 4 one copy of your credit report each month for up to 12 consecutive
- 5 months.”

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